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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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October 5, 1993

BY HAND

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

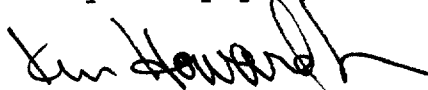
Re: Scripps Howard Broadcasting Company
MM Docket 93-94

Dear Mr. Caton:

Transmitted herewith, on behalf of Scripps Howard Broadcasting Company, is an original and six (6) copies of its Statement for the Record in the above-referenced matter.

If you have any questions regarding this matter, please contact the undersigned.

Very truly yours,



Kenneth C. Howard, Jr.
Counsel for Scripps Howard
Broadcasting Company

cc: The Honorable Richard L. Sippel (by hand) (with enclosures)

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OCT - 5 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket 93-94
)	
Scripps Howard)	File No. BRCT-910603KX
Broadcasting Company)	
)	
For Renewal of License of)	
Station WMAR-TV,)	
Baltimore, Maryland)	
)	
and)	
)	
Four Jacks)	File No. BPCT-910903KE
Broadcasting, Inc.)	
)	
For a Construction Permit for)	
a New Television Facility on)	
Channel 2 at Baltimore, Maryland)	

To: The Honorable Richard L. Sippel
Presiding Administrative Law Judge

STATEMENT FOR THE RECORD

Scripps Howard Broadcasting Company, ("Scripps Howard") licensee of WMAR-TV, Baltimore, Maryland and applicant for renewal in the above referenced proceeding, hereby submits the following statement for the record.

The information submitted in this proceeding regarding the broadcast interests of the principals of Four Jacks Broadcasting, Inc. ("Four Jacks") was limited to the broadcast ownership interests identified in the Commission's records. Scripps Howard herein explains the need for cross-examination of Four Jacks' principals about certain other non-ownership media interests that are relevant to diversification. Scripps Howard accordingly asks the Presiding Judge to take official notice of an outstanding programming arrangement, recognized by the Commission's

staff, whereby the principals of Four Jacks, through Station WPGH, Pittsburgh, program the great majority of broadcast time available on Station WPTT-TV, Pittsburgh. See Letter to Howard M. Liberman and Martin R. Leader from Edythe Wise, Enforcement Division, Mass Media Bureau, November 5, 1992 (copy attached).

The Commission has yet to address the impact of its multiple ownership rules on such local marketing agreements in television. See the outstanding Notice of Proposed Rulemaking in Review of Regulations Governing Television Broadcasting, 7 F.C.C. Rcd 4111 (1992). In radio, however, the Commission has announced a policy that programming another station in the market for over 15% of its broadcast time is, for multiple ownership purposes, equivalent to having an attributable ownership interest in that station. Revision of Radio Rules and Policies, 7 F.C.C. Rcd 2755 at ¶ 65, aff'd in relevant part, 7 F.C.C. Rcd 6387, 6401-02 (1992). Further, no such local marketing agreements are permitted which are not consistent with the revised local ownership limits adopted in that proceeding.

In light of the Commission's policy determination on the effect of a local marketing agreement on ownership in radio, it is inescapable that such programming arrangements will be held to similarly implicate an ownership interest in the less diverse environment of television broadcasting. At a minimum, the likelihood exists that in the immediate future these programming interests will be recognized as ownership interests, and it is prudent to ensure that the record in this proceeding need not be

reopened to take additional evidence on this point.

Accordingly, Scripps Howard urges that the record should reflect all the existing and proposed television programming arrangements involving Four Jacks' principals. Scripps Howard will seek to cross-examine Four Jacks' principals regarding any existing and/or proposed programming arrangements whereby Four Jacks principals would own one station in a market while controlling a substantial amount of the programming of another station in the same market.

Scripps Howard also notes for the record that on September 30, 1993, it filed a Petition to Deny an application (File No. BALCT-930816KS) to assign the license of Station WNUV-TV, Channel 54, Baltimore, Maryland from WNUV-TV 54 Limited Partnership to WNUV Licensee, Inc. ("Assignee"). In this petition, Scripps Howard urges that an interest in the Assignee must be attributed to the four Four Jacks' principals. Scripps Howard further argues that not all the information relevant to consideration of the interests of Four Jacks' principals in the application and in Assignee had been presented to the Commission. To the extent that Four Jacks' principals have an attributable interest in the Assignee, this would affect Four Jacks' local diversification status in this proceeding. Accordingly, depending on the status of the WNUV assignment application at the time of the hearing, Scripps Howard also expects to seek to cross-examine Four Jacks'

principals with respect to their diversification claim based upon the scope of their interests in the Assignee.

Respectfully submitted,

SCRIPPS HOWARD
BROADCASTING COMPANY

By: 

Kenneth C. Howard, Jr.
Leonard C. Greenebaum
David N. Roberts

Its Attorneys

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Certificate of Service

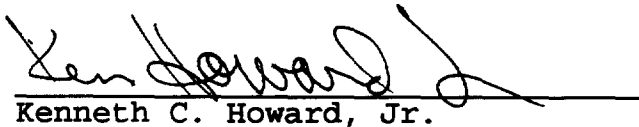
I, Kenneth C. Howard, Jr., counsel for Scripps Howard Broadcasting Company, hereby certify that I have caused copies of the foregoing "Statement for the Record" to be hand-delivered this 5th day of October, 1993 to the following:

The Honorable
Richard L. Sippel
Presiding Administrative Law Judge
Federal Communications Commission
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Kenneth C. Howard, Jr.

Pink
WPTT-T

FCC MAIL SECTION

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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IN REPLY REFER TO:

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Dear Messrs. Liberman and Leader:

This is in reference to the "Complaint and Request for Ruling," filed on behalf of WNUV TV-54 Limited Partnership ("WNUV"), licensee of television station WNUV-TV, Baltimore, Maryland, and Mark I. Baseman.

WNUV alleges that Sinclair Broadcast Group, Inc., licensee of television station WPGH-TV, Pittsburgh, Pennsylvania, abused the Commission's processes by initiating state court litigation against Baseman, and using threats, reprisals and character attacks, to intimidate Baseman, a petitioner to deny the application of Commercial Radio Institute ("CRI") (which is controlled by the same principals as Sinclair) to assign television station WPTT-TV, Pittsburgh, Pennsylvania to Edwin Edwards. The Commission granted that application on June 21, 1991. WNUV requests that the Commission find Sinclair's actions contrary to the public interest and order it to cease its conduct immediately. WNUV also asks the Commission to issue a declaratory ruling that WNUV's and Baseman's actions did not constitute an abuse of the Commission's processes. WNUV acknowledges that Baseman, a Pittsburgh attorney, filed a petition to deny at WNUV's behest. The parties disagree as to the propriety of their respective actions. Sinclair denies that it has abused Commission processes and argues that WNUV's action, i.e., hiring a local resident to file a petition in a proceeding

in which WNUV would have no standing, is itself an abuse of the Commission's processes.

By way of background, WNUV states that in January 1991, program suppliers disclosed that the principals of Sinclair, David D. Smith, J. Duncan Smith, Robert E. Smith, and Frederick D. Smith ("the Smiths"), then-licensee of television station WBFF(TV), Baltimore, Maryland,¹ were using coercive economic pressures to deny WNUV quality syndicated programming in the Baltimore market. According to WNUV's account, the Smiths, who had just applied to sell WPTT to an employee and to acquire WPGH, indicated to program suppliers that they would link program licensing in Pittsburgh (where they allegedly claimed they would be "the only game in town") to exclusive agreements with WBFF in Baltimore. Fearing retaliation, WNUV engaged Baseman to file a petition to deny CRI's application to assign WPTT to Edwin Edwards, who was WPTT's general manager. WNUV claims that, as the application appeared designed to give the Smiths continued control over WPTT even after they acquired WPGH, WNUV believed that the Smiths were attempting to gain control over two television stations in the Pittsburgh market. As a result of Baseman's March 4, 1991, petition against the WPTT application, the WPTT application was amended a number of times to address the Commission's multiple ownership and cross-interest concerns. On June 21, 1991, the Commission granted both Pittsburgh applications, and the transactions were consummated on August 31, 1991.

WNUV alleges that after Baseman's pleadings were filed, the Smiths engaged in harassing behavior, such as menacing telephone calls, threatening letters, and public accusations of racism against Baseman and his law firm. WNUV further states that before the Pittsburgh application grants became final, (during the period in which Baseman could have filed a petition for reconsideration or an application for review), the Smiths filed a summons in equity in Pennsylvania state court and commenced discovery to determine who, aside from Baseman, was involved in the attempt to block the Pittsburgh sale. WNUV also states that once the transactions became final, the Smiths converted the equity proceeding into an action at law and served a summons on Baseman -- but without having served a complaint on Baseman, WNUV claims Baseman does not know what the Smiths are alleging or what relief they are seeking.

In response, Sinclair argues that the WNUV/Baseman filing is an attempt to obfuscate ongoing civil litigation in the state court, and charges that they are trying to use the Commission as a shield from money damages in the civil suit. Sinclair argues

¹ WBFF's current licensee, Chesapeake Television Licensee, Inc., is owned by the four Smiths.

essentially that the Commission has no involvement in a state court proceeding, such as its suit against Baseman, involving tortious conduct, and that a declaratory ruling is inappropriate when there is no actual controversy or no uncertainty before the Commission. Both WNUV/Baseman and Sinclair reiterate their principal arguments in their replies and further responses. In a supplemental pleading, WNUV provides more specific examples of the Smiths' alleged anticompetitive conduct in Pittsburgh and Baltimore. Sinclair denies the allegations and again questions Baseman's real motives in filing a petition to deny in which Sinclair alleges he was a paid "straw man."²

Upon consideration of the parties' arguments, as well as all of the information before us, we decline at this time to issue the requested declaratory ruling or to otherwise grant the relief requested.

With respect to the allegation that Sinclair abused the Commission's processes by filing an action against Baseman in state court, we are unable to conclude based upon the information before us that the suit was initiated solely or primarily to intimidate or harass Baseman. Furthermore, it appears that the gravamen of Sinclair's suit addresses a private matter, involving rights arising under state law. Such a controversy is more appropriately resolved in the state court proceeding. The Commission does not assume jurisdiction in private matters between licensees. See, e.g., Patrick Henry, 69 FCC 2d 1305, 1311-12 (1978); McAlister Television Enterprises, Inc., 60 RR 2d 1379, 1383-84 (1986). Moreover, although WNUV alleges that the effect of the suit's pendency is to chill speech protected under

² WNUV also raises a collateral issue as to whether WPTT and WPGH misrepresented to the Bureau in the WPTT assignment application that there were no agreements between the Smiths and WPTT concerning WPTT-TV's programming and that WPTT would be a Home Shopping Network ("HSN") affiliate after closing. As WNUV points out, WPTT and WPGH have been operating under a local marketing agreement. Sinclair explains that WPTT was forced to drop its affiliation under intense pressure from cable franchisees, an unanticipated circumstance when WPTT contracted with HSN. WNUV has provided no evidence that would lead us to believe that WPTT made a misrepresentation as to its intended programming when its assignment application was granted. Further, the agreement went into effect on January 6, 1992, over four months after the WPTT sale closed. The Commission's Field Operations Bureau did, however, conduct an independent investigation of the WPTT/WPGH arrangement to determine if it constituted an unauthorized transfer of control. The FOB determined that it did not. Upon our review of the station's local marketing agreement, we find that no enforcement action is warranted.

the First Amendment, we are unable to determine from the record the precise nature of the conduct for which Sinclair seeks redress. Even if we could, however, comity would require that we presume the adequacy of Pennsylvania law to protect these interests. Furthermore, there is no record evidence whatsoever to indicate that such a presumption would be unwarranted.

With respect to the allegation that Sinclair has abused the Commission's processes by threatening, intimidating, and harassing Baseman and WNUV, we note that the conduct alleged does not involve the types of threats the Commission has considered abusive or potentially abusive in past cases. See Fort Collins Broadcasting Co., Inc., 38 FCC 2d 707 (1972) (no abuse found where the licensee threatened suit, and made public statements addressing the merits of petitions to deny and the responsibility of the petitioners); Chronicle Broadcasting Co., Inc., 27 RR 2d 743, 771-773 (1973) (licensee-commissioned investigation of a complainant); compare Patrick Henry, supra (pattern of conduct involving threats to file lawsuits, and statements that could be construed as physical threats, warrant further inquiry in a hearing).

With respect to the contentions that Baseman's and WNUV's conduct in filing the petition to deny constituted or did not constitute an abuse of process, regardless of whether, as a legal matter, an abuse of our processes occurred in this case, we decline to undertake any further enforcement action. We note that, as a general matter, Commission policy strongly favors the disclosure in licensing proceedings of both the fact that an individual is filing in his status as counsel, and the identity of the party represented. We also note that WNUV's and Baseman's actions appear contrary to this policy. In this instance, however, it does not appear that the integrity of our processes were jeopardized, since WNUV had a colorable basis for asserting standing to petition to deny, and thus would not have been precluded by the Commission from raising on its own behalf the objections Baseman raised. Furthermore, it is the Commission's general policy to address whatever merits objections to license grants may have, regardless of whether the objector has standing under the standards applied in federal courts. Moreover, it does not appear that the lack of disclosure in this case resulted in relevant information not coming to the Commission's attention in a timely manner. Compare Gulf Coast Communications, Inc., 81 FCC 2d 499 (Rev. Bd. 1980), recon. denied, 88 FCC 2d 1033 (Rev. Bd. 1981), rev. denied, FCC 82-168 (April 6, 1982). Under these circumstances, we see no reason to undertake further enforcement action, or to issue the requested declaratory ruling.³

³ We note that on October 29, 1992, Channel 63, Inc., licensee of television station WLIB, Bloomington, Indiana, filed a petition to deny a number of assignment applications of

Thus, we find that no action is warranted on this matter. Accordingly, WNUV's "Complaint and Request for Ruling" IS HEREBY DENIED.

Sincerely,

Edythe Wise, Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau

A.Z.

Renaissance Communications Corporation. The petition to deny relies in part on facts presented in connection with WNUV's complaint and the responses, and in part on facts not previously presented. This ruling is based solely upon the facts presented in connection with WNUV's complaint, and is without prejudice to whatever additional ruling may be deemed appropriate in connection with the petition to deny.